

## FCC REPORT TO CONGRESS AS REQUIRED BY THE ORBIT ACT

This report is submitted in accordance with Section 646 of the Open-market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act")

Section 646 states:

"(a) ANNUAL REPORTS - The President and the Commission shall report to the Committees on Commerce and International Relations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate within 90 calendar days of the enactment of this title, and not less than annually thereafter, on the progress made to achieve the objectives and carry out the purposes and provisions of this title. Such reports shall be made available immediately to the public."

"(b) CONTENTS OF REPORTS - The reports submitted pursuant to subsection (a) shall include the following:

"(1) Progress with respect to each objective since the most recent preceding report.

"(2) Views of the Parties with respect to privatization.

"(3) Views of the industry and consumers on privatization.

"(4) Impact privatization has had on United States industry, United States jobs, and United States industry's access to the global marketplace."

### **I. Progress as to Objectives and Purposes**

The purpose of the ORBIT Act is "to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat".<sup>2</sup>

#### **A. Commission Actions**

The Commission has undertaken the following actions required by or related to the ORBIT Act:

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<sup>1</sup> Pub. L. No. 106-180; 114 Stat. 48 (2000), §646.

<sup>2</sup> Pub. L. No. 106-180, § 2.

- On March 31, 2000, the Commission released a Public Notice inviting comment appropriate to the development of this report.<sup>3</sup>
- As required by Section 641(b), the Commission initiated on May 24, 2000, a rulemaking proceeding to determine if users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment capacity directly to meet their service or capacity requirements.<sup>4</sup> Comments are due in response to the Notice of Proposed Rulemaking (NPRM) on June 23, replies on July 6, and responses to replies on July 11. The ORBIT Act requires the Commission to make the required determination by September 13, 2000.
- The Commission is considering an application from INTELSAT to become an FCC licensee upon privatization. As part of the privatization process, INTELSAT created a separate private company, Intelsat LLC, which has applied to the Commission for U.S. licenses for satellites operating in the C and Ku frequency bands.<sup>5</sup> Intelsat LLC is seeking licenses to operate 17 satellites presently owned and operated by INTELSAT, 10 future replacement satellites, and 13 modifications permitting relocation of existing satellites upon launch of planned satellites. The requested licenses, if granted, would be effective upon privatization of INTELSAT. Section 601(b)(1)(d) of the ORBIT Act permits the Commission to act on the Intelsat LLC application prior to completion of ongoing privatization negotiations, if necessary, for the United States to become the licensing jurisdiction for INTELSAT. Any licenses issued, however, must be conditioned upon compliance with provisions of the ORBIT Act.<sup>6</sup> The pleading cycle has been completed.
- The ORBIT Act terminated restrictions in the Communications Satellite Act of 1962 on the ownership of Comsat Corporation ("Comsat"). As a result, the Communications Satellite Act no longer restricts Lockheed Martin from acquiring 100 percent of Comsat's stock.<sup>7</sup> Lockheed Martin has filed an application with the Commission for transfer of control of Comsat's various licenses and authorizations.

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<sup>3</sup> Public Notice, Report No. SPB-155, March 31, 2000.

<sup>4</sup> *Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, IB Docket No. 00-91, FCC 00-186 (rel. May 24, 2000). (*Availability of Direct Access Capacity*).

<sup>4</sup> Should INTELSAT instead decide to obtain operating authority from another country, the Commission subsequently would consider, in a separate proceeding, operation by a privatized INTELSAT in the U.S. market as a non-U.S. licensed satellite system upon the filing of appropriate applications under our 1997 *DISCO II* decision and pursuant to applicable U.S. law. See *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to provide Domestic and International Satellite Services in the United States*, Report and order, 12 FCC Rcd 24094 (1997) (*DISCO II* decision).

<sup>6</sup> Pub. L. 106-180 § 601(b)(1)(d). See also §§ 621 and 622.

<sup>7</sup> The Commission last year authorized Lockheed Martin to acquire 49 percent of Comsat's stock under the terms of the 1962 Satellite Act. In the *Master of Lockheed Martin Corporation, Regulus, LLC and Comsat Corporation Application for Transfer of Control of Comsat Government Systems, Inc.* Memorandum, Order and Authorization, File No. SAT-ISP-19981016-00072 (rel. Sept. 15, 1999).

The application was placed on Public Notice on April 7, 2000.<sup>8</sup> One filing has been received in the proceeding. The filing does not oppose the transaction but requests the Commission to impose conditions.

- Section 641(a) of the ORBIT Act requires that users and service providers be permitted to obtain Level 3 direct access to INTELSAT capacity. Previously, the Commission decided in a rulemaking proceeding that Level 3 direct access is in the public interest.<sup>9</sup> As part of its decision, the Commission prohibited any INTELSAT Signatory, other than Comsat, from providing Level 3 direct access service in the United States to or from any foreign country in which the Signatory or any of its affiliates use 50 percent or more of all the INTELSAT capacity consumed in that particular country. BT North America submitted a petition to the Commission asking that the restriction be waived. On May 16, 2000 the Commission released an Order approving the waiver for BT North America.<sup>10</sup>
- MCI WorldCom filed a petition for reconsideration of the Commission's 1999 *Direct Access decision*. MCI Worldcom requests reduction of the 5.58 percent surcharge over INTELSAT direct access prices imposed on direct access users to compensate Comsat for signatory-related costs.
- Comsat and Stratos Mobile Networks (USA) ("Stratos") operate gateway earth stations in the United States for the provision of Inmarsat services. Comsat and Stratos filed applications to amend their licenses to operate with Inmarsat when it privatized on April 15, 1999. They amended these applications at the request of the Commission after enactment of the ORBIT Act. The amended applications were put on Public Notice on May 17, 2000.<sup>11</sup> The Commission will review the amended applications in view of the procedures and privatization criteria specified in the ORBIT Act and other issues that may be raised in the proceeding.<sup>12</sup>
- Stratos and MarineSat Communications Network have filed applications to provide Inmarsat M-4 service in the United States. The application was put on Public Notice on June 7, 2000.<sup>13</sup> Comsat also filed an application to provide domestic land mobile and aeronautical services via Inmarsat. The Comsat application will be placed on public notice after the date of this report. The Commission will review the applications in view of the procedures and provisions of the ORBIT Act and other issues that may be raised in the proceedings.

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<sup>8</sup> Public Notice, Report No. SAT-00041, April 7, 2000.

<sup>9</sup> *Direct Access to the INTELSAT System* (Report and Order), 14 FCC Rcd. 15703 (1999). (*Direct Access decision*).

<sup>10</sup> *In the Matter of BT North America Petition for Waiver of Direct Access to INTELSAT System Restriction*, FCC 00-166 (rel. May 16, 2000).

<sup>11</sup> Public Notice, Report No. SES-00182, May 17, 2000.

<sup>12</sup> Pub. L. No. 106-180 §§ 601(b), 621, and 624.

<sup>13</sup> Public Notice, Report No. SES-00188, June 7, 2000.

- Section 623 of the ORBIT Act requires “separated entities” created before January 1, 1999 to conduct an IPO no later than July 1, 2000. The section permits the Commission to extend this deadline to no later than July 31, 2001. On May 26, 2000, New Skies Satellites NV requested six-month extension of the deadline.<sup>14</sup> The request was placed on public notice on May 31, 2000.<sup>15</sup>
- The ORBIT Act authorizes the Commission “to impose similar regulatory fees on the United States signatory which it imposes on other entities providing similar services”.<sup>16</sup> The Commission is considering in its rulemaking proceeding on assessment and collection of regulatory fees for the fiscal year 2000 whether it is appropriate to impose regulatory fees on Comsat.<sup>17</sup>
- The FCC continues to participate in an advisory capacity on U.S. delegations at international meetings held by INTELSAT regarding the privatization of INTELSAT.

### **B. Status of Privatization**

INTELSAT decided in principle at its October 1999 Assembly of Parties (1999 Assembly) meeting to privatize its operations. The 1999 Assembly decided to create a national stock corporation supervised by a residual intergovernmental organization (IGO) to assure connectivity is maintained for lifeline users who continue to rely on INTELSAT for international communications services.<sup>18</sup> The INTELSAT Board of Governors will submit to an Assembly of Parties meeting to be held in the fourth quarter of 2000 a comprehensive plan for privatization. The Board of Governors has targeted April 1, 2001 as the date for privatization if its plan is approved by the Assembly.

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<sup>14</sup> New Skies is the Netherlands-based INTELSAT spin-off created in 1998 as INTELSAT’s first step toward privatization. In 1999, the Commission granted New Skies a limited, three-year authorization to serve the U. S. market pending its fulfillment of a number of actions to become independent of INTELSAT. *See In the Matter of New Skies Satellites, N. V. for Authorization to Access the U. S. Market, Order and Authorization*, 14 FCC Rcd. 13003 (1999). One such action is undertaking an IPO in order to achieve substantial non-Signatory ownership as anticipated by the 1998 INTELSAT Assembly of Parties decision to create New Skies. *See INTELSAT Assembly of Parties, Record of Decisions of the Twenty-Second (Extraordinary) Meeting*, (AP-22-3E Final) Salvador, Brazil, March 31, 1998 (“Assembly Decision”). New Skies is expected to apply to the Commission for a full 10-year authorization after it holds its IPO.

<sup>15</sup> Public Notice, Report No.SAT-00044, May 31, 2000.

<sup>16</sup> Pub. Law 106-180 § 642[c]. A 1998 decision of the United States Court of Appeals for the District of Columbia Circuit in *PanAmSat Corp. v. FCC*, 198 F.3d 890 (D.C. Cir. 1999), set aside and remanded the Commission’s 1998 fee order, which did not assess a fee against Comsat.

<sup>17</sup> *In re Assessment and Collection of Regulatory Fees for Fiscal year 2000*, FCC 00-117, MD Docket No. 00-58 at para. 16-17 (rel. April 3, 2000 (FY 2000 Notice of proposed Rulemaking).

<sup>18</sup> INTELSAT Assembly of Parties, *Record of Decisions of the Twenty-Fourth Meeting*, Penang, Malaysia, October 26-29 (1999).

To consider primarily government-related issues in connection with the privatization, the 1999 Assembly created a working party, known as the Penang Working Party (PWP). The PWP has undertaken work on a number of issues in preparation for the fall 2000 Assembly of Parties meeting. The PWP currently is addressing draft amendments to the INTELSAT Agreements, the structure, scope, and role of the residual IGO, and the legal method by which the transformation into the privatized structure will be accomplished. The PWP is also addressing competition and jurisdiction issues relating to privatizing INTELSAT. It is scheduled to conclude its work and provide a report to the Assembly no later than July 1, 2000. The PWP will hold its final meeting in Malaysia during the second half of June. Since this report will be submitted to Congress prior to the completion of the June meetings, we intend to provide additional information to Congress if the results of these meeting warrant doing so.

The 1999 Assembly of Parties meeting established principles for the operation of a privatized INTELSAT. They include ensuring global connectivity and coverage, protecting lifeline users and connectivities, and safeguarding the principle of non-discriminatory access as set forth in the INTELSAT Agreement. They also provide that the privatized INTELSAT would adhere to principles and practices of fair competition, adopt competitive and commercially sound business practices, and seek market access on the same basis as competitors providing similar services.

The Assembly also adopted several preconditions to privatization. As a result of giving up its treaty status, INTELSAT must, like its competitors, obtain landing rights to serve countries. In order to assure continuity of service and opportunity to provide new services, INTELSAT will assess, prior to privatization, whether it is assured of landing rights in a significant number of countries that represent a substantial and geographically even cross-section of total usage of the INTELSAT system. The Assembly also established the precondition that the FCC agree to transfer INTELSAT's ITU satellite network filings to another jurisdiction if the United States is not selected to be the licensing jurisdiction. Other preconditions involve continuity of service agreements with existing customers and assurances that the ability to maintain global connectivity will not be impaired by the jurisdiction selected for the privatized INTELSAT.

The INTELSAT Board currently is considering a holding company structure for the privatized company. Under the proposal, a holding company would be located in Bermuda for tax purposes. A service company would be located in the United States and would be comprised of the current INTELSAT headquarters building, staff and operations center. The service company would provide day-to-day support services for operation of the privatized INTELSAT. A licensing company would be located in jurisdiction(s) yet to be determined. The licensing company would operate the satellites pursuant to the national regulatory regime of the jurisdiction(s) selected. INTELSAT's orbital locations would be registered at the ITU by that jurisdiction(s).

In order to submit its comprehensive plan to the Assembly of Parties at its fourth quarter 2000 meeting, the PWP and the Board of Governors at its September 2000 meeting must come to final decisions on a number of major issues, including corporate structure and governance, jurisdiction, timing of an IPO, arrangements to maintain connectivity to lifeline users, the role of the residual IGO, post-privatization distribution arrangements, and procedures for privatizing

INTELSAT by the April 1, 2001 target date pending entry into force of an amended INTELSAT Agreement.<sup>19</sup>

## **II. Views of Parties on Privatization**

The Commission has not received any views of Parties regarding privatization.

## **III. Views of Industry and Consumers on Privatization**

PanAmSat Corporation, Comsat, INTELSAT, Stratos Mobile Networks, and MarineSat Communications (jointly), Lockheed Martin, GE American Communications, Inmarsat and British Telecommunications/BT North America responded to the Commission public notice inviting comments appropriate to the development of this report. The Commission did not receive any views of consumers regarding privatization in response to its public notice.

A number of the commentators note that the privatization of INTELSAT is an unusually complex process, but that INTELSAT is making concrete progress toward privatization.<sup>20</sup> Some emphasize that active FCC oversight is critical to ensuring that the pro-competitive goals of the ORBIT Act are achieved and that entry by INTELSAT into the U.S. market will not distort competition.<sup>21</sup> One commentator argues that although it is being forced to privatize, INTELSAT continues to take steps to lock in its "governmental advantages," particularly through the process of applying for a U.S. license.<sup>22</sup> Some note that it is too soon after the passage of the ORBIT Act to determine whether the privatization will be consistent with the criteria set forth in the ORBIT Act or what impact INTELSAT's privatization will actually have on the industry.<sup>23</sup> In addition, commentators maintain that Inmarsat has already privatized and has done so in a manner substantially consistent with the ORBIT Act.<sup>24</sup> Copies of the comments are attached.

## **IV. Impact of Privatization**

Section 646 requests that we report on the impact of privatization on U.S. industry, jobs, and industry access to the global market. Given that privatization of INTELSAT has not yet occurred, we cannot report on its impact in these areas. We expect that future reports will contain such information.

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<sup>19</sup> See Agreement Relating to the International Telecommunications Satellite Organization, "INTELSAT", 23 U.S.T. 3813; TIAS No. 7532 (February 12, 1973). See also Operating Agreement Relating to the International Telecommunications Satellite organization, "INTELSAT", 23 U.S.T. 401, (August 20, 1971).

<sup>20</sup> See Comments by BT North America, Lockheed Martin, and INTELSAT.

<sup>21</sup> See Comments by GE American Communications and PanAmSat.

<sup>22</sup> See Comments by PanAmSat.

<sup>23</sup> See Comments by GE American Communications and INTELSAT.

<sup>24</sup> See Comments by Comsat, Inmarsat, and Stratos Mobile Networks.

## **V. Summary**

The Commission has undertaken a number of proceedings required by or related to the ORBIT Act. The decisions it makes in some of these proceedings will be affected by the outcome of ongoing negotiations under way to privatize INTELSAT. Commission staff are serving in an advisory capacity on U.S. delegations engaged in these negotiations. U. S. representatives are working to bring about a pro-competitive outcome consistent with U. S. policy. The Commission will continue to inform Congress of the actions it takes to implement the requirements of the ORBIT Act.

Enclosures: Comments received in response to the Commission's Public Notice.